

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
SOUTHEAST CASS WATER RESOURCE DISTRICT
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
JULY 12, 2022

A virtual / conference call meeting of the Southeast Cass Water Resource District was held on July 12, 2022, at 8:30 a.m.

Present were Dan Jacobson, Chairman; Keith Weston, Manager; Dave Branson, Manager; Carol Harbeke Lewis, Secretary-Treasurer; Nina Stone, Accountant; Melissa Maertens, Administrative Assistant; Sean M. Fredricks, Ohnstad Twichell, P.C.; Kurt Lysne, Brady Woodard; Matt Welle and Erik Gilbertson, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Mary Scherling, Cass County Commissioner; Jody Bertrand, Jim Hausauer, Roger Kluck and Donald Kress, City of Fargo; Ryan Ottis, Ottis Contracting LLC; Don Dabbert, Dabbert Custom Homes; Kelly Perhus and Tyler Odegaard, Normanna Township property owners.

Approval of agenda

It was moved by Manager Branson, seconded by Manager Weston and unanimously carried to approve the order of the agenda, as amended.

Minutes

It was moved by Manager Weston, seconded by Manager Branson and unanimously carried to approve the minutes of the June 14, 2022, meeting.

Spring melt - Kelly Perhus and Tyler Odegaard

Kelly Perhus and Tyler Odegaard discussed matters related to the spring melt including snagging and clearing needs on the Sheyenne River at State Highway 46 and operation of the pool elevation at Baldhill Dam. Kurt Lysne discussed the Corps of Engineers' standard operating procedures of the Baldhill Dam pool in relation to weather and flood forecasts this spring. Mr. Odegaard stated releases of the Baldhill Dam pool during the spring melt add to the volume of water in the area and contributes to damage of township infrastructure. Discussion was held on snagging and clearing on the Sheyenne River. The Board directed Brady Woodard to contact the North Dakota Department of Transportation regarding snagging and clearing needs on the Sheyenne River at State Highway 46. Discussion was held on potentially hosting a meeting with various entities and individuals to discuss the importance of snagging and clearing on the Sheyenne River and Wild Rice River. Mr. Woodard indicated there are funds available to conduct some snagging and clearing on Sheyenne River Reach I near State Highway 46.

A motion was made by Manager Branson and seconded by Manager Weston to schedule a meeting with local political officials and property owners to discuss snagging and clearing and Baldhill Dam operations with regard to spring flooding. Upon roll call vote, the motion carried unanimously.

Sheyenne-Maple Flood Control District #1 – request from the United States Geological Survey (USGS) to install stream gaging equipment on the Sheyenne River near 81st Street S in Horace and at the Sheyenne-Maple Flood Control District #1 weir near 21st Avenue East and Sheyenne Street in West Fargo

Mr. Lysne stated the USGS is seeking to obtain additional data to help improve models related to the Metro Flood Diversion Project. To collect the data, the USGS is requesting permission to install temporary stream gaging equipment on the Sheyenne River near 81st Street S in Horace and at the Sheyenne-Maple Flood Control District #1 weir near 21st Avenue East and Sheyenne Street in West Fargo. The cost to do so would be paid by the Corps of Engineers.

It was moved by Manager Weston and seconded by Manager Branson to authorize the USGS to install stream gaging equipment on the Sheyenne River near 81st Street S in Horace and at the Sheyenne-Maple Flood Control District #1 weir near 21st Avenue East and Sheyenne Street in West Fargo, as set out in the letter from the USGS dated July 5, 2022. Upon roll call vote, the motion carried unanimously.

Sheyenne-Maple Flood Control District #2 – pending special assessment regarding West Fargo Improvement District No. 02-2250

The Board briefly discussed the short notification timeframes regarding updates to the pending special assessment on Sheyenne-Maple Flood Control District #2 parcel 02-3000-01240-012 for West Fargo Improvement District No. 02-2250.

Proposed sanitary sewer for Commerce on I-29

Jim Hausauer updated the Board on the proposed sanitary sewer for Commerce on I-29. The Commerce on I-29 property owner's association believes they have 100% approval for the project. Sean Fredrickson indicated no further work will be done on the project on behalf of the Water Resource District until the agreement is in place between the City of Fargo and the Commerce on I-29 development. Mr. Hausauer indicated he will provide an update on the status of the agreement at a future meeting.

Drain #10 Improvement Project No. 2021-01 – from approximately 45th Avenue N to just west of 25th Street N

Mr. Woodard stated communication continues regarding right of way needed for Drain #10 Improvement Project No. 2021-01.

Reassessment of Drain SC-1 (Drains #3, #9 and #10)

Discussion was held regarding the 2022 reassessment of Drain SC-1. Mr. Lysne reported Moore Engineering, Inc. has completed the preliminary assessment district list and verified the assessment district boundaries.

Additional minutes relating to the reassessment of Drain SC-1 is attached hereto.

Drain #21C – request from Jeff Phillip to clean the channel in the northwest corner

Mr. Lysne discussed the results of the survey of the Drain #21C channel from Cass County Highway 6 to Cass County Highway 16. There is generally 1-2 feet of sediment in the bottom of the channel and some culverts have sediment in front of them. Mr. Lysne recommended cleaning the Drain #21C channel in Sections 13, 23, 26 and 35 of Warren Township after harvest to avoid damaging crops.

It was moved by Manager Weston and seconded by Manager Branson to authorize Moore Engineering, Inc. to hire a contractor to clean out the Drain #21C channel in Sections 13, 23, 26 and 35 of Warren Township. Upon roll call vote, the motion carried unanimously.

Drain #27 – Cub Creek First and Second Additions

Don Dabbert discussed maintenance and property owners' requests in the restricted use area along Drain #27 in the Cub Creek First Addition that was detailed in the *Permanent Easement Agreement* with Cub Creek Development LLC. Mr. Dabbert indicated he wishes to discuss a revision of terms prior to considering a *Permanent Easement Agreement* regarding Cub Creek Second Addition. Mr. Dabbert invited the Board to meet at Cub Creek First and Second Additions to tour the area along Drain #27 and further discuss the matter. The Board was open to coordinating a special meeting.

Matt Welle discussed the future crossing on Drain #27 at 83rd Avenue South (previously known as 81st Avenue South on the Cub Creek First Addition plat) that will be a collector roadway that serves Cub Creek Second Addition as well as the greater area. Mr. Welle stated the cost estimate for the roadway and box culvert is approximately \$1,200,000. The City of Horace requests 50% cost-share from the Water Resource District for the project. Mr. Fredricks noted the Water Resource District is not obligated by North Dakota statute to provide cost-share on the crossing at 83rd Avenue S as it is not a section line crossing. The Board discussed the cost-share request and indicated they are not opposed to the project; however, the Water Resource District has not provided cost-share on city roadway crossings not located on section lines in the past.

A motion was made by Manager Branson and seconded by Manager Weston to deny the cost-share request from the City of Horace for the crossing on Drain #27 at 83rd Avenue South. Upon roll call vote, the motion carried unanimously.

Drain #45 – Gravender property and drain right of way

Mike Opat updated the Board on right of way along Drain #45. At this time, the majority of property owners are not interested in pursuing improvements or development along Drain #45. Mr. Opat indicated he will provide additional updates regarding Drain #45 as they occur in the future.

Drain #53 Improvement Project 2019-01

Mr. Lysne indicated the grass is established regarding the Drain #53 Improvement Project 2019-01 and the project is complete. Roger Kluck indicated the City of Fargo is very pleased with the outcome of the project.

It was moved by Manager Branson and seconded by Manager Weston to approve and authorize the Chairman to sign *Contractor's Application for Payment No. 9 (Final)*, in the amount of \$22,104.08. Upon roll call vote, the motion carried unanimously.

Correspondence regarding the WBI Energy Transmission, Inc. natural gas transmission facilities known as the Wahpeton Expansion Project crossing Drains #35 and #60

Discussion was held on correspondence from the Federal Energy Regulatory Commission (FERC) regarding the WBI Energy Transmission, Inc. Wahpeton Expansion Project regarding crossings on Drains #35 and #60. The Board previously approved *Access Agreements* to allow surveying activities by WBI Energy Transmission, Inc. regarding Drains #35 and #60. The Water Resource District has not yet received a signed copy of the Agreements from WBI Energy Transmission, Inc. Mr. Fredricks noted WBI Energy Transmission, Inc. will need to obtain Utility Permits from the Water Resource District prior to installing pipeline on Water Resource District facilities.

It was moved by Manager Weston and seconded by Manager Branson to authorize the Water Resource District Attorney to contact WBI Energy Transmission, Inc. to obtain signed copies of the *Access Agreements* for surveying activities regarding Drains #35 and #60 and to submit comments on the matter to the FERC if WBI Energy Transmission, Inc. does not reply within two weeks. Upon roll call vote, the motion carried unanimously.

2022 facility inspections

Mr. Woodard presented the 2022 inspection report for the Southeast Cass Water Resource District facilities.

A motion was made by Manager Branson and seconded by Manager Weston to authorize Moore Engineering, Inc. to hire a contractor to complete repairs at the following sites, provided funding is available:

- Drain #9 Sites #1 through #6
- Drain #35 Sites #1 through #19
- Drain #40 Sites #1 through #4
- Drain #47 Sites #1 through #10
- Drain #50 Sites #1 through #12
- Drain #53 Sites #1 through #3
- Drain #60 Sites #1 through #11

Upon roll call vote, the motion carried unanimously.

2022-2023 Sheyenne River and Wild Rice River Snagging and Clearing Projects

Mr. Lysne indicated the 2022-2023 Sheyenne River and Wild Rice River Snagging and Clearing Projects cost-share request will be considered at the State Water Commission meeting in August. There are significant funds remaining in the 2021-2022 Wild Rice River *Agreement for Cost-Share* with the State Water Commission as conditions were poor for snagging and clearing activities on the Wild Rice River last winter.

A motion was made by Manager Weston and seconded by Manager Branson to withdraw the request for cost-share to the State Water Commission for the 2022-2023 Wild Rice River Snagging and Clearing Project if the State Water Commission will allow utilization of remaining funds from the 2021-2022 Wild Rice River Snagging and Clearing *Agreement for Cost-Share Reimbursement* for the 2022-2023 Wild Rice River Snagging and Clearing Project. Upon roll call vote, the motion carried unanimously.

Application to Install a Subsurface Water Management System No. 202211 for Dale Torgerson, Devin Torgerson and Torgerson Family Trust in the S 1/2 of Section 16 in Normanna Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 202211*, filed July 8, 2022, by Applicants Dale Torgerson, Devin Torgerson, and Torgerson Family Trust. Under the Application, Applicants seek to install a 280-acre drain tile system in the S 1/2 of Section 16 in Normanna Township, Cass County, North Dakota. The project will include a single pump outlet located in the northwest corner of the SE 1/4 of Section 16; the pump will discharge into the south road ditch along 50 1/2 Street SE; the discharge will flow west in the south road ditch along the north boundary of the S 1/2 of Section 16; at the northwest corner of the SW 1/4 of Section 16, the discharge will enter the east road ditch along Cass County Highway 15; from there, the discharge will flow north in the Highway 15 road ditch. The project will include five surface inlets.

According to County tax parcel information supplied by Applicants, Dale and Trudy Torgerson own the SE 1/4 of Section 16 and the Torgerson Family Trust owns that portion of the SW 1/4 of Section 16 where Applicants intend to install the tile system. With regard to downstream properties, Cass County Electric Cooperative owns a parcel in the northwest corner of the SW 1/4 of Section 16, and the Cass County Highway Department owns its Highway 15 right of way.

Manager Branson moved, and Manager Weston seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 202211* filed July 8, 2022, for Dale Torgerson, Devin Torgerson, and Torgerson Family Trust regarding a proposed tile system in the S 1/2 of Section 16 in Normanna Township, and to authorize the Secretary-Treasurer to sign *Subsurface Water Management Permit No. 202211*, subject to the following conditions:

1. Applicants will install and maintain erosion protection or other ditch stabilization materials at any and all outlets into Normanna Township's road right of way.
2. Applicants will re-establish any areas disturbed installing or maintaining Applicants' tile system.
3. Applicants must turn off any pump outlets and otherwise close all outlets during "critical flood periods," as determined by the Southeast Cass Water Resource District.
4. Applicants will remove silt or vegetation, or repair erosion or scour damages **directly** caused by Applicants' tile system, but only up to one mile downstream from the project outlet.
5. Applicants will not install Applicants' tile system within 20 feet, on either side, of any rural water lines Cass Rural Water Users District has in the S 1/2 of Section 16 in Normanna Township, under any blanket easements, or otherwise beyond the Water Users District's existing easement(s).
6. Applicants must apply for an amendment to *Subsurface Water Management Permit No. 202211* in advance of any proposed alterations to outlet locations, the addition of any outlets, or improvements or modifications to the tile system that could increase the capacity or drainage area of the tile system.

Upon roll call vote, the motion carried unanimously.

With regard to condition #4, Applicants' obligations to remove silt or vegetation, or to repair erosion or scour damages, will only arise upon submission of substantial evidence to the Board by a downstream landowner or road authority that Applicants' tile system **directly** caused accumulation of silt or vegetation, erosion, or scouring.

Under Section 61-32-03.1, the Board cannot attach any additional conditions to Applicants' permit. However, for Applicants' protection, and to ensure protection of Applicants' tile system, the Board will recommend that Applicants comply with the following:

1. The Board recommends that Applicants obtain written consent from the Normanna Township Board of Township Supervisors to discharge into, or otherwise utilize, any of the Township's ditches or road right of way.
2. The Board recommends that Applicants obtain written consent from the Cass County Highway Department to discharge into or otherwise utilize any of its highway right of way.

3. The Board recommends that Applicants obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

The Board will provide copies of the Board's *Notice of Decision, Subsurface Water Management Permit No. 202211*, and Applicants' downstream flow map to the North Dakota Department of Water Resources, Normanna Township, the Cass County Highway Department, Cass County Electric Cooperative, and Cass Rural Water Users District. Applicants' detailed project design map is an exempt record, and the Board will not provide copies to any third parties.

Items for approval, with input provided by the Water Resource District Engineer

It was moved by Manager Weston and seconded by Manager Branson to approve the following, with input from the Water Resource District Engineer:

- *Utility Permit* for Sparklight / Cableone to install fiber optic and coax cable on the south side of Drain #27, east of 42nd Street S
- *Utility Permit* for Cass County Electric Cooperative to install underground power conduits and cables through Rose Coulee, west of 25th Street S

Upon roll call vote, the motion carried unanimously.

Temporary Water Permits for Industrial Builders, Inc. to divert water from the Wild Rice River for construction

The Board received and filed *Temporary Water Permits* for Industrial Builders, Inc. to divert water from the Wild Rice River for construction at the following locations:

- NE 1/4 of Section 2 in Pleasant Township
- NW 1/4 of Section 3 in Pleasant Township

Upon roll call vote, the motion carried unanimously.

Items for review and comment, with input provided by the Water Resource District Engineer

Donald Kress reviewed the Fargo Department of Planning and Development August Preliminary Packet. The Board directed the Secretary-Treasurer to submit comment on the Fargo Department of Planning and Development August Preliminary Packet, with input from the Water Resource District Engineer.

Brief discussion was held on the City of Horace Planning and Zoning Commission notice of hearing regarding the Wangler Addition.

2021 Audit

A motion was made by Manager Branson and seconded by Manager Weston to approve the 2021 Audit of the Southeast Cass Water Resource District. Upon roll call vote, the motion carried unanimously.

Approve Pledge of Assets – Alerus Financial (as per agreement of March 7, 1996)

It was moved by Manager Weston and seconded by Manager Branson to approve the following Pledge of Assets:

Alerus Financial (as per agreement of March 7, 1996)

Upon roll call vote, the motion carried unanimously.

Bills

It was moved by Manager Weston and seconded by Manager Branson to approve payment of the wire transfers and the electronic funds transfers, as presented. Upon roll call vote, the following Managers voted in favor: Jacobson, Weston and Branson. The motion carried unanimously.

Legislative update

Mr. Fredricks provided a brief update on legislative matters that impact water resource districts.

Adjournment

There being no further business for the Board to consider, it was moved by Manager Branson, seconded by Manager Weston and unanimously carried to adjourn the meeting.

APPROVED:

Dan Jacobson
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer